

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG - 4 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Cellular Service and Other Commercial Mobile Radio
Services in the Gulf of Mexico)

WT Docket No. 97-112

Amendment of Part 22 of the Commission's Rules to
Provide for Filing and Processing of Applications for
Unserved Areas in the Cellular Service and to Modify
Other Cellular Rules)

CC Docket No. 90-6

To: The Commission

REPLY COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°")¹ hereby submits its reply to initial comments on the Commission's Second Further Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding. As detailed below, 360° strongly supports action by the Commission that will promptly lift current restrictions on the provision of reliable cellular service to shoreline areas along the Gulf of Mexico. 360°, therefore, generally supports the two-zone approach detailed in the Notice. The proposed Coastal Zone will achieve what 360° believes is an essential goal: giving the land-based carriers an opportunity to serve the Coastal Zone. Further, like a large number of the commenters, 360° continues to have reservations regarding the proposal to allow the Gulf licensees to locate transmitters on land without the land-based licensee's consent. Finally, 360° urges the Commission to permit *de minimis* extensions into

¹ 360° is the second largest publicly held cellular company in the United States, offering wireless voice and data service to nearly 2.3 million subscribers in more than 100 markets in 15 states. 360° operates a number of cellular systems in Florida that abut the Gulf of Mexico.

the Gulf -- at least on an interim basis -- during the pendency of this rulemaking so that 360° and other carriers can finally address the long-standing and acute need for cellular service in land-based areas adjacent to the Gulf.

I. 360° SUPPORTS THE COMMISSION'S EFFORTS TO REMOVE OBSTACLES TO THE PROVISION OF COMPREHENSIVE CELLULAR SERVICE IN COASTAL AREAS IN AND ALONG THE GULF OF MEXICO

360° wholeheartedly endorses the Commission's objective in this proceeding -- to resolve those issues currently preventing the provision of comprehensive cellular service to water and land-based areas along the border of the Gulf of Mexico. For more than three years, since the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded the Commission's order redefining the Gulf licensees' Cellular Geographic Service Areas ("CGSAs"),² the resulting juxtaposed regulatory scheme has prevented land-based licensees abutting the Gulf from creating any new extensions into the water and thus from effectively serving the beachfront areas of their markets. At the same time, this prohibition on extensions by land-based carriers, coupled with the Gulf licensees' reliance upon oil platforms for their transmitter sites, has effectively precluded the delivery of reliable service to well-traveled coastal waters, particularly along the Florida coast.³

² *Petroleum Communications, Inc.*, 22 F.3d 1164 (D.C. Cir. 1994).

³ Contrary to the assertions of Petroleum Communications, Inc. ("PetroCom"), Comments of PetroCom at 12, there are large unserved areas in and along the Gulf, particularly off the coast of Florida. As one commenter has noted, "the federal government currently does not allow oil platforms within 12 miles of the shoreline, and the state prohibits oil platforms within 100 miles of the shore." Comments of GTE Service Corporation ("GTE") at 10-11. These restrictions make it technically impossible for the Gulf licensees to reliably serve the Florida coastal waters.

As 360° detailed in its initial comments, customers in shoreline markets have long been clamoring for better -- and, in some cases, any -- cellular service in the heavily traveled beachfront highways, communities and recreational areas. For residents of barrier islands, marinas and trailer parks, cellular service often provides the only opportunity for communications. Cellular is also increasingly becoming the communications method of choice for many recreational boaters.⁴ The safety and welfare of the small boating community thus demands comprehensive cellular service in the Gulf's coastal waters. As such, 360° strongly supports the Commission's efforts in this proceeding to resolve these important service issues once and for all.

As a means of addressing these issues, 360° generally supports the Commission's proposal to divide the Gulf of Mexico Service Area ("GMSA") into an Exclusive Zone and a Coastal Zone. Clearly, the creation of an Exclusive Zone as proposed would satisfy the concerns voiced by the Court in its remand order regarding the Gulf licensees' need for flexibility. The proposed policy recognizes the transient nature of the Gulf environment by permitting the Gulf licensees to modify their systems to provide service to new or relocated oil or gas platforms without facing competing applications or unnecessary regulatory delay. Such flexibility is unparalleled in the cellular industry. Contrary to Coastel's allegations that Gulf licensees have suffered competitive disadvantages,⁵ the Exclusive Zone provides Gulf licensees

⁴ See Comments of GTE at 5-6 (discussing the "community of interest" that exists between cellular customers along the shoreline and in the coastal waters: "customers most likely to be boating in Gulf waters adjacent to the shore are customers that live within the land markets abutting the Gulf of Mexico.").

⁵ See Comments of Bachow/Coastel, L.L.C. ("Bachow/Coastel") at 28 (arguing that certain rules promulgated by the Commission "have significantly prejudiced the Gulf-based CTS providers by giving an unfair competitive advantage to the adjacent market land-based CTS carriers").

with a degree of protection from competition and minimum-service requirements not available to any other cellular provider in the country.⁶

360° additionally believes that opening up the coastal water areas for licensing to interested service providers will facilitate the provision of cellular service to land and water areas along the Gulf's border. As recognized by a number of commenters, it is essential that land-based licensees be given an opportunity to participate in serving these areas, as they are the entities best able to initiate service promptly, efficiently and effectively.⁷ The Coastal Zone proposed by the Commission appears to be an appropriate way of ensuring the provision of service to these areas by those most qualified to provide it.

Nevertheless, several commenters have proposed interesting alternatives to the creation of the Coastal Zone -- typically involving the inclusion of coastal waters within the boundaries

⁶ PetroCom even requests further special privileges and exceptions from obligations that are unprecedented in the cellular industry. No basis has been provided for such privileged treatment, especially where, as here, such treatment would have negative effects on consumers. *See, e.g.*, Comments of PetroCom at 8 (proposing 3-year exclusive build-out period for Gulf carriers in eastern Coastal Zone), 8-9 (seeking retention of CGSA rights for Gulf carriers in Coastal Zone even after removal of transmitter), 14 (suggesting 18-month exclusive build-out period for Gulf carriers in rest of Coastal Zone), 22-23 (requesting exemption from Universal Service contribution requirements).

⁷ *See, e.g.*, Comments of ALLTEL Mobile Communications, Inc. ("ALLTEL") at 2 (stating that "[c]oastal coverage may, in some situations, be best and most efficiently achieved by land-based carriers"); Comments of AT&T Wireless Services, Inc. ("AT&T") at 4 (pointing out that "[l]and-based cellular carriers . . . have a proven record of service to coastal users"); Comments of BellSouth Corporation ("BellSouth") at 8 ("[c]ellular service provided by the land-based cellular licensees to coastal areas certainly would be less expensive [than] if provided by incumbent GMSA licensees."); Comments of GTE at 5 (stating that "it is not technically feasible for separate carriers to serve the land adjacent to the shore and the Gulf waters adjacent to the land"); Comments of MobileTel, Inc. ("MobileTel") at 2 (stating that "it would be far more efficient for the Commission to permit existing land-based carriers with service areas that border the Gulf to provide coverage to any unserved coastal areas"); Comments of Southwestern Bell Mobile Systems, Inc. ("SBMS") ("[l]and-based carriers can economically serve much of this area.").

of the adjacent land-based markets.⁸ Inasmuch as such proposals mirror the Commission's current treatment of other communications services in the Gulf region (such as PCS and SMR), these alternative proposals may be more consistent with the Commission's established principles of regulatory parity and thus should be carefully considered.⁹

Further, 360° supports the overwhelming view amongst the commenters that all previously approved, *de minimis* contour extensions must be incorporated into the extending licensees' CGSAs.¹⁰ This grandfathering policy will guarantee the continued provision of reliable cellular service within these areas and avoid unnecessary service disruption or derogation. In addition, 360° reiterates its belief that a uniform propagation formula, as opposed to a hybrid formula, should be used to calculate contour extensions that extend over both land and water. As others have emphasized, the administrative costs involved with the use of a hybrid formula substantially outweigh any potential advantages.¹¹

⁸ See, e.g., Comments of AT&T at 4-6; Comments of GTE at 3; Comments of BellSouth at 4; Comments of MobileTel, at 3.

⁹ See, e.g., Comments of BellSouth at 6 (arguing that "[r]egulatory parity requires that similarly situated cellular licensees be afforded the same opportunity as PCS licensees to serve the Gulf"); Comments of AT&T at 5 (arguing that "adopting the WCS licensing scheme here would provide regulatory parity among potential competitors"); Comments of GTE at 7 (expressing concern "about the effect that creating a different set of rules for cellular and other broadband CMRS providers [compared to PCS providers] will have on competition.").

¹⁰ See, e.g., Comments of PetroCom at 11; Comments of AT&T at 10; Comments of BellSouth at 9; Comments of Centennial Cellular Corporation ("Centennial") at 2; Comments of Palmer Wireless, Inc. ("Palmer") at 10; Comments of SBMS at 4; Comments of Texas RSA 20B2 Limited Partnership ("Texas 20B2") at 7; Comments of Vanguard Cellular Systems, Inc. ("Vanguard") at 3; Comments of Wireless One Holding Company, L.P. ("Wireless One") at 2.

¹¹ See, e.g., Comments of Vanguard at 5 ("[t]he administrative burden for land-based licensees now to implement a "hybrid" contour measurement system would be substantial and complex"); Comments of Palmer at 12 (discussing the potential problems involved with the use of a hybrid formula and concluding that it "does not support the notion of case-by-case determinations due to the delay which will likely result"); Comments of AT&T at 10

II. THE COMMISSION SHOULD PROCEED CAUTIOUSLY IN CONSIDERING ALLOWING GULF LICENSEES TO LOCATE TRANSMITTERS ON LAND

Like the majority of commenters, 360° has significant reservations regarding the Notice's proposal to rescind the current policy prohibiting Gulf licensees from locating transmitters on land without the consent of the land-based carrier.¹² While one of the Gulf licensees has stated that "[i]t is unclear how the [change in policy] makes any material difference,"¹³ 360° understands the fear of another commentator that "the elimination of the rule prohibiting land-based transmitters will be construed as granting [Gulf] licensees the right to construct on land."¹⁴

As an initial matter, a number of the commenters agree with 360° that the assumption upon which the proposed policy change is based -- that RSA licensees have built out their systems and the existing prohibition is obsolete -- is simply false.¹⁵ As 360° detailed in its

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(discussing the "administrative complexity associated with creation of a 'hybrid' formula for determining coverage of signals that extend partially over land and partially over water").

¹² See, e.g., Comments of AT&T at 7 (discussing the "intractable interference problems [which] have long underpinned the Commission's prohibition on placement of GMSA facilities in neighboring CGSAs"); Comments of MobileTel at 5 (stating that "it is highly unlikely that a Coastal Zone licensee could ever place its sites on land without capturing a significant portion of the subscribers of these carriers"); Comments of SBMS at 6 (arguing that removing the consent requirement "will create call set-up problems, co-channel interference and inadvertent roaming scenarios within a caller's 'home' market").

¹³ Comments of Bachow/Coastel at 25.

¹⁴ Comments of Vanguard at 7.

¹⁵ See, e.g., Comments of SBMS at 4 (stating that "the presumption of a well reasoned and optimally engineered build out is based upon faulty logic"); Comments of GTE at 3-4 (stating that the Commission's current regulatory regime has forced land-based licensees to ensure that

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initial comments, land-based licensees (particularly those in RSAs) have been effectively precluded from completing the build-out of their systems because of the court's remand decision and the regulatory juxtaposition that it created. Accordingly, not only have circumstances not changed, but the Commission may conclude that equitable principles require that these land-based operators finally have the opportunity to exercise their exclusive build-out rights within their market.

Importantly, the comments overwhelmingly urge that, should this policy change be pursued, the prohibition on non-consensual contour extensions into another carrier's CGSA delineated in Sections 22.911(d)(2)(i) and 22.912¹⁶ must continue to apply to Gulf licensees.¹⁷ 360° emphatically agrees. These provisions were adopted to be applicable to all cellular licensees to address serious interference and capture issues. No basis has been provided for abandoning established principles of regulatory parity and dispensing with such critical protections in the Gulf scenario.¹⁸ As one commentator noted, the "Commission has previously concluded that it is highly unlikely that a land-based site, which is intended to serve only water-

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their contours stop at the beach, and, "[a]s a result, customers using portable cellular phones on the beach or in nearby buildings often are either unable to make and receive cellular telephone calls, or experience dropped calls").

¹⁶ 47 C.F.R. §§ 22.911(d)(2)(i), 22.912.

¹⁷ *See, e.g.*, Comments of ALLTEL at 4; Comments of AT&T at 6-9; Comments of MobileTel at 4-6; Comments of Palmer at 12; Comments of SBMS at 6-7; Comments of Vanguard at 6-7; Comments of Wireless One at 2.

¹⁸ *See, e.g.*, Comments of AT&T at 7, 9 (stating that the Commission "has never authorized carriers to place facilities in neighboring CGSAs without the consent of the licensee" and that the Gulf licensees "have failed to establish why the requirement to obtain consent . . . should be waived").

based traffic, would be feasible without significant interference to the land-based licensee.”¹⁹

Under such circumstances, it is imperative that any contour extensions into an incumbent’s CGSA be predicated upon its expressed consent.

Further, as recognized by 360° and others, the current configuration of land-based systems abutting the Gulf leaves few opportunities for the placement of a Gulf licensee’s transmitter such that the transmitter’s contours would not overlap with the land-based licensee’s CGSA.²⁰ As several commenters have pointed out, this problem is further exacerbated by zoning and environmental restrictions throughout the Gulf coastal region which prohibit the construction of transmitters directly on the shoreline.²¹ These restrictions dictate that any proposed transmitters be located even further within the land-based market, potentially resulting in even greater interference to the land-based carrier’s service.²²

¹⁹ *Id.* at 6.

²⁰ *See, e.g.*, Comments of Palmer at 12.

²¹ *See, e.g.*, Comments of AT&T at 8 (“[c]ell sites often cannot be located near the edge of the water for environmental and zoning reasons, which would require GMSA sites to be located further within the land-based carrier’s CGSA.”) (citation omitted); Comments of MobileTel at 5 (“[t]he ‘soil’ conditions in these environmentally sensitive wetlands virtually preclude construction of towers and cell sites”); Comments of Vanguard at 6 (discussing the “prohibitions on commercial development in coastal areas (such as Santa Rosa Island, Florida)”).

²² In addition to interference issues, a number of commenters correctly recognized the significant subscriber capture problems that could be created by the introduction of Gulf licensees’ transmitters on land without the land-based carrier’s consent. Without careful coordination, land-based subscribers in these markets could find themselves subject to exorbitant roaming charges (especially given the Gulf carriers’ higher rates) for calls made within their home market. *See, e.g.*, Comments of MobileTel at 5; Comments of AT&T at 8.

III. THE COMMISSION SHOULD PERMIT *DE MINIMIS* EXTENSIONS INTO THE GULF DURING THE PENDENCY OF THIS RULEMAKING

As 360° has detailed herein and in its initial comments, the prompt resolution of the issues presented in the Notice is essential to bring reliable cellular service to customers in beachfront areas and the Gulf coastal waters. Yet, in light of the contentious postures taken by some of the commenters, it appears inevitable that this proceeding will not be resolved quickly.²³ Further, given the delays inherent in the licensing process, it is highly unlikely that any entity will be licensed to serve the immediate offshore and beachfront areas within the next eighteen months.

Due to these probable delays, 360° urges the Commission to allow *de minimis* extensions into the Gulf of Mexico -- at least on an interim basis -- during the pendency of this rulemaking. Other commenters appear to support the use of interim measures to ensure comprehensive coverage until the final rules can be put into place.²⁴ Such extensions are essential to enable cellular customers in land-based markets to receive the coverage and service quality they demand without further delay. Because such applications would be subject to prior Commission review, the agency could ensure that any extensions are the minimum necessary and would not cause interference to the Gulf carriers' operations.²⁵

²³ See, e.g., Comments of Bachow/Coastel at 14 (discussing "the Commission's improper approach to the remand").

²⁴ See, e.g., Comments of PetroCom at 8 (proposing that land-based licensees be allowed "to operate in the Eastern Coastal Zone on an interim or secondary basis . . .").

²⁵ Inasmuch as the areas just off-shore are generally not being served by the Gulf carriers, there are unlikely to be any capture or interference issues associated with the grant of these extensions.

IV. CONCLUSION

For the reasons described above, 360° applauds the Commission's efforts to facilitate the provision of comprehensive cellular service to shoreline areas in the Gulf of Mexico. In particular, 360° supports the Notice's proposal to divide the GMSA into a Coastal Zone and an Exclusive Zone and to provide adjacent land-based licensees an opportunity to serve the water and land areas along the coast. While 360° continues to have significant concerns regarding the proposal to lift the prohibition on Gulf carriers' locating transmitters on land, it vigorously urges the Commission to ensure that any such change in policy remains subject to the interference safeguards to which all cellular licensees are subject. Finally, 360° requests that the Commission allow *de minimis* extensions into the Gulf during the pendency of this rulemaking proceeding so that land-based customers can promptly receive the coverage and service quality they demand.

Respectfully submitted,

360° COMMUNICATIONS COMPANY

By: Kevin C. Gallagher (NV)
Kevin C. Gallagher
Senior Vice President -- General Counsel and
Secretary
360° COMMUNICATIONS COMPANY
8725 W. Higgins Road
Chicago, IL 60631
(773) 399-2348

August 4, 1997